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Introduction: Online Consultation and Democratic Communication

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This issue of *I/S: A Journal of Law and Policy for the Information Society* revisits the topic of "electronic democracy" with which the journal debuted four years ago. The global explosion of online information flow is steadily transforming the relationship of governments to their publics. The first wave of change, captured in the now-common phrase, "e-government," entailed the use of the Internet to improve government management and service delivery. It was followed, however, by an increasing turn to "e-democracy," that is, the design and use of digital information and communications technologies (ICTs) to enhance democratic political practice. Of special interest, governments and civic activists began to innovate in the hope that the Internet might foster a new and inclusive form of many-to-many public dialogue linking government officials and the citizens they serve. The Internet might thus provide a new technological basis for "a more deliberative view of active citizenship," in which "[n]ew forms of governance" could emerge that would be "increasingly consultative and alive to experiential evidence."[1] New

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[1] J. G. BLUMLER & STEPHEN COLEMAN, REALISING DEMOCRACY ONLINE: CREATING A CIVIC COMMONS IN CYBERSPACE 6–7 (2001).

technologies would step in to facilitate the robust public deliberation so lacking in twentieth-century representative democracies.

A conspicuous development seemingly aimed at that ideal has been the advent of "online consultations"– Internet-based discussion forums that represent government-run or at least government-endorsed solicitations of public input with regard to policy making. Such solicitations sometimes focus public attention fairly specifically on a particular contemplated action– for example, Health Canada's request—no longer on the Web—for online feedback concerning the design elements and content of its proposed revised Food Guide. On other occasions, government may post a consultation document that raises a range of issues within a broad subject on which public input would be welcome, such as the City of Gloucester's solicitations of reaction to its action plan for revamping important sites throughout the city.[2]

After more than a decade of experience with such consultations, there are at least two interrelated reasons to suspect that their democratic potential is nowhere near to being realized. One is that, despite the widespread availability of online forums for political expression, few are tied in any ascertainable, accountable way to actual governmental policy making. That is, a citizen participating in most online forums has no assurance that his or her effort will have any impact on the government's decision making process, much less on the actual policy that emanates from that process. The second reason—no doubt related to the first—is that most exercises in online deliberation attract relatively small numbers of participants. It is not obvious how substantial new numbers of citizens could be attracted to the political process by ICT-enabled forums that cannot be shown to have actual impact on the lives of those who participate. In short, if the quality of democracy is to be measured by the inclusiveness and deliberativeness of the interactions between government and citizen, the incremental impact of online consultations so far appears to be minimal.

On the other hand, there is a case to be made for viewing online consultations—and, indeed, the entire turn to e-democracy—in a broader frame. A polity at any level, from the local to the national, lives within a communications environment, or set of information flows, that identifies and helps frame it as a political community. That communications environment circulates information that members of the polity, both individually and collectively, engage with in a variety

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[2] *See* New Future of Gloucester, http://www.gloucester.gov.uk/futureofgloucester.

of ways. Collectively, people use information for the straightforward coordination of group activity– whether holding elections, managing trash collection, or staging civic celebrations. In democratic societies, they use information to hold powerful people and organizations to account. Polities engage with information for collective problem solving– including all the processes of agenda-setting, values articulation, option identification, and decision making that problem solving entails. Seen in this perspective, online consultations might be welcomed as just one of the many plausible government initiatives that can help democratize our collective life by fostering civic information flow and promoting active engagement by all citizens in the public sphere.

In 2006, Professor Stephen Coleman—one of the world's leading cyberdemocracy researchers—together with this author recruited an international group of researchers from law, political science, communication, public policy and information science in order to collaborate on an assessment the democratic significance of the online consultation phenomenon. The U.S. members of the team have had the good fortune to be funded for three years of meetings by the Center for Technology in Government at SUNY Albany, headquarters for a National Science Foundation grant awarded to Dr. Sharon Dawes and Dr. Valerie Gregg to assess the potential for international, cross-disciplinary research on digital governance. The group agreed to meet face-to-face at least five times between 2007 and 2009, and each meeting has been used both to refine our collective views and to polish what are becoming chapters of a multi-authored volume on the subject of online consultation, which we hope to be published in 2010. Four of the five papers in this issue of *I/S* were presented by group members to a meeting of the group held in Columbus, Ohio in March, 2008. Only one, the paper by Andrew Chadwick, actually represents a draft chapter for our anticipated book; the others reflect thematically related work of several of our team members. Quite by happenstance, as we were preparing this volume, *I/S* received a manuscript from Michael Froomkin, himself a leading U.S. cyberlaw expert, which perfectly fit the themes of this special issue.

The question each article in this issue addresses is, to what extent and in what ways can online government information and consultation initiatives shape democratic life? In *Web 2.0: New Challenges for the Study of E-Democracy in an Era of Informational Exuberance*,[3] political scientist Andrew Chadwick urges an expansive

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[3] Andrew Chadwick, *Web 2.0: New Challenges for the Study of E-Democracy in an Era of Informational Exuberance*, 5 ISJLP 9 (2009).

perspective on this question. He notes the early orientation of Internet researchers towards the deliberative potential of online consultations, but worries that the deliberative focus has limited appreciation of the ways in which networked web services can serve democratic ends. Instead of basing our assessment of the Internet's democratic potential on *a priori* theoretical assumptions, Professor Chadwick would prefer to observe how social interactions are actually evolving online in a Web 2.0 environment and assessing the Internet's democratic potential by connecting our observations of online citizen behavior to an analysis of the institutional incentives of the people and institutions who govern us.

The "user perspective" similarly animates *Complexity, Information Overload and Online Deliberation*[4] by Israeli legal scholar Oren Perez. If "the legitimacy of a political arrangement rests . . . on its capacity to facilitate a communicatively complex deliberative process,"[5] then provision must be made to enable citizens to cope with what is arguably an excess of information. The trick is to accomplish this objective without rendering citizens as passive subjects of a few institutionalized information intermediaries. Toward that end, Professor Perez urges the pursuit of technological designs that not only facilitate conversation, but which engender user understanding and an enhanced capacity to navigate our way through "information overload."

Like Andrew Chadwick, French information scientist Laurence Monnoyer-Smith argues, in *Deliberation and Inclusion: Framing Online Public Debate to Enlarge Participation: A Theoretical Proposal*,[6] for a re-orientation of the focus on deliberation that has animated much early research on government-sponsored online consultation. Unlike Professor Chadwick, however, her move is not to go beyond deliberation, but to expand its meaning. She believes researchers rooted in theories of communicative action associated with Jürgen Habermas have laid too exclusive a stress on structured linguistic exchange as the process by which people collectively produce norms. Correspondingly, they have failed to appreciate sufficiently "how non-argumentative and/or non-linguistic modes of

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[4] Oren Perez, *Complexity, Information Overload and Online Deliberation*, 5 ISJLP 43 (2009).

[5] *Id.* at 52.

[6] Laurence Monnoyer-Smith, *Deliberation and Inclusion: Framing Online Public Debate to Enlarge Participation: A Theoretical Proposal*, 5 ISJLP 87 (2009).

expression can intervene in the construction of value preferences."[7] Deploying the theory of creative action associated with Hans Joas, Professor Monnoyer-Smith argues that among the most important impacts of ICT-enabled civic deliberation will be its potential to promote altogether new forms of expression that allow people to convey their value preferences and to influence others through modalities other than Habermasian linguistic discourse.

Public policy scholar Steven J. Balla likewise focuses on an important way in which government-sponsored information initiatives may foster democracy without, strictly speaking, promoting deliberation. In *Municipal Environments, Nonprofit Entrepreneurs, and the Development of Neighborhood Information Systems*,[8] he describes the phenomenon of neighborhood information systems–banks of online civic data combined with maps and other analytic tools that can well become sites of community organizing around civic problems. By interviewing people involved in supporting such systems and a broad comparison of municipalities of over 75,000 residents, Professor Balla tries to account for why this particular innovation has shown up in some communities and not others. He finds that neighborhood information systems are more likely to be a feature of big, densely populated cities with large minority populations and high unemployment and cities in which nonprofit organizations have been able to overcome a series of predictable obstacles in supporting technological innovation. Overcoming those obstacles appears to turn not only on local, but also on national initiative.

In the final contribution in our paper symposium, *Building the Bottom Up From the Top Down*,[9] law professor Michael Froomkin turns our attention to how the Internet might promote democracy through the facilitation of more self-governing groups. Recapitulating the difficulties of achieving collective action around the public interest, Professor Froomkin considers how social software may be employed to address those problems. He suggests a critical democracy-building role for government may be the facilitation, through appropriate law and public policy, of a technological environment most likely to stimulate and support bottom-up group formation.

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[7] *Id.* at 92.

[8] Steven J. Balla, *Municipal Environments, Nonprofit Entrepreneurs, and the Development of Neighborhood Information Systems*, 5 ISJLP 117 (2009).

[9] A. Michael Froomkin, *Building the Bottom Up From the Top Down*, 5 ISJLP 141 (2009).

Although I cannot claim to have planned it this way, it may be appropriate to view the following body of work as symptomatic of some unease among both researchers and democratic activists with a view of democratic revival that depends too singularly, if at all, on the promise of an inclusive, highly rationalistic political discourse engaging the broad base of society. That vision may variously seem either too demanding or too narrow as a measure of the Internet's democratic impact. By stressing other democratic forms of ICT-enabled interaction and other government-sponsored initiatives that can support democratic life in a meaningful way, the authors in this volume implicitly underscore the complexity of the communications environment in which democratic action occurs and the multiple dimensions along which that environment ought to be evaluated as successful or not. Such an observation, however, only to points to what one can hope is yet the next stage in cyberdemocracy research, namely, identifying in a compelling way how to characterize and measure what ought to count as democratic success. Steven Balla persuasively states that: "Systematic demonstrations that neighborhood information systems are widely used and are routinely effective can themselves be valuable resources for entrepreneurs seeking to extend the reach of the NNIP [National Neighborhood Indicators Partnership] in the years ahead."[10] It might be added that systematic demonstrations that cyberdemocracy initiatives are widely used and have any normatively valuable and verifiable impact would be critically helpful in strengthening the case that government should deploy technology ambitiously for democratic ends. In undertaking such a complex assessment, researchers would do well to address the issues so well illuminated by our contributors.

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[10] Balla, *supra* note 8, at 140.